Supreme Court, U.S.
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NO. 00-703

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

LINDA KATES - Petitioner

v.

STATE OF OHIO - Respondent

PETITION FOR WRIT OF CERTIORARI TO THE OHIO COURT OF APPEALS SEVENTH JUDICIAL DISTRICT

BRIEF IN OPPOSITION

PAUL J. GAINS
Ohio Reg. No. 0020323

JANICE T. O'HALLORAN
Counsel of Record
Ohio Reg. No. 0021024
120 Market Street
Youngstown, Ohio 44503
(330) 740-2330 (Office)
(330) 740-2008 (Fax)
Attorneys for Respondent

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES.....	i
STATEMENT OF THE CASE.....	1
REASONS OPPOSING WRIT.....	3
I. WHEN CRIMINAL ACTIONS CAUSE HARM TO MORE THAN ONE VICTIM DOUBLE JEOPARDY DOES NOT PREVENT PROSECUTION FOR THE CRIMES AGAINST THE SEPARATE VICTIMS.....	3
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases:	**Page:**
Benton v. Maryland (1969), 395 U.S. 784.....	8
Blockburger v. U.S. (1932), 284 U.S. 29.....	5,7,8
Brown v. Ohio (1997), 432 U.S. 161.....	8,9
Harris v. Oklahoma (1977), 433 U.S. 682.....	5,6,8,9,10
State v. Thomas (1980), 61 Ohio St. 2d 254.....	6,8

Constitution, Statutes and Rules:

O.R.C. 2903.04(A).....	2,4
O.R.C. 2903.04(C).....	4
O.R.C. 2903.04(A)(C).....	2
O.R.C. 2919.22.....	4
O.R.C. 2919.22(A).....	1,3
United States Constitution Amendment V. Section 10, Article 1.....	7

STATEMENT OF THE CASE

Appellant had two children, an eight year old daughter, Shayla Kates, and a five year old son, Jameeqwa Kates. Appellant was renovating a newly purchased residence and on the evening in question brought her children to the residence. The home was filled with debris, had boarded windows and was without electricity, so Appellant placed candles throughout the house. She left her two children unattended while she went to run an errand. During the twenty minutes that Appellant was gone, one of the candles fell over, starting a fire which consumed the home. Shayla managed to escape the house, however, Jameeqwa was unable to escape and died of smoke inhalation.

The City of Youngstown charged Appellant with child endangering, in violation of O.R.C. 2919.22(A), for creating a substantial risk to the health or safety of her eight year old daughter, Shayla Kates, by violating a duty of care, protection or support. On May 9, 1997 the appellant was tried and convicted of child

endangering in the Youngstown Municipal Court. The Mahoning County Grand Jury on June 6, 1997 indicted the Appellant for involuntary manslaughter, in violation of O.R.C. 2903.04(A)(C). (Docket, hereinafter referred to as "D." 2). Appellant was charged with causing the death of her five year old son, Jameeqwa Kates, as a proximate result of Appellant committing or attempting to commit the felony of endangering children, in violation of O.R.C. 2903.04(A). (D.2). On July 18, 1997, Appellant filed a motion to dismiss the indictment. (D.14). The trial court issued a decision on September 19, 1997, that overruled Appellant's motion. (D. 17). The court found that separate criminal charges could be brought for crimes committed against the separate victims.(D. 17). Also, the court held that the prosecution in municipal court for crimes committed against one victim does not invoke constitutional protection against double jeopardy to prohibit prosecution of Appellant for a different crime against a different victim. (D.17).

Appellant filed a motion for reconsideration regarding her motion to dismiss the indictment on October 15, 1997. (D. 18). The trial court again overruled Appellant's motion. (D. 22). On October 29, 1997, Appellant entered a plea of no contest to the charge of involuntary manslaughter. (D. 25). Appellant was sentenced on December 23, 1997, to serve three years at the Marysville Reformatory. (D. 28). On February 8, 2000, the Seventh District Court of Appeals overruled Appellant's assignment of error and affirmed the decision of the Common Pleas Court of Mahoning County, Ohio. While appellant sought review by the Ohio Supreme Court, that court denied her appeal on May 31, 2000.

REASONS FOR OPPOSING WRIT

I

WHEN CRIMINAL ACTIONS CAUSE HARM TO MORE THAN ONE VICTIM DOUBLE JEOPARDY DOES NOT PREVENT PROSECUTION FOR THE CRIMES AGAINST THE SEPARATE VICTIMS.

Appellant was tried and convicted of child endangering, a violation of O.R.C. 2919.22(A), in Youngstown Municipal Court, for

creating a substantial risk of harm to her eight year old daughter, Shayla Kates. O.R.C. 2919.22 provides in pertinent part:

> (A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support . . .
> (E)(1) Whoever violates this section is guilty of endangering children.
> (2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following:
> (a) Except as otherwise provided in division (E)(2)(b) or (c) of this section, a misdemeanor of the first degree . . .
> (c) If the violation results in serious physical harm to the child involved, a felony of the third degree.

Appellant was indicted for involuntary manslaughter, a violation of O.R.C. 2903.04(A), for causing the death of her five year old son, Jameeqwa Kates. She entered a plea of no contest in the Mahoning County Court of Common Pleas. O.R.C. 2903.04(A) states that "[n]o person shall cause the death of another. . .as a proximate result of the offender's committing or attempting to commit a felony." O.R.C. 2903.04(C) provides that "[w]hoever violates this

section is guilty of involuntary manslaughter. Violation of division (A) of this section is a felony of the first degree."

Each statutory provision which Appellant was charged with requires proof of at least one additional fact that the other does not. Felonious child endangering requires proof of parental neglect causing a substantial risk of harm to a person under eighteen years of age that results in serious physical harm to the child, which is not a requirement for involuntary manslaughter. Involuntary manslaughter requires proof of the death of another, which is not a requirement of felonious child endangering. Thus, both statutes require proof of an additional fact which the other does not, satisfying the test as set forth by this Court in Blockburger v. U.S. (1932) 284 U.S. 299.

The second test as adopted by this Honorable Court in Harris v. Oklahoma (1977) 433 U.S. 682 prohibits charging a defendant with an offense when proof of the one offense is necessary, as a practical matter, to prove the other, and both completed offenses arose out of the same criminal conduct. Under this test, double

jeopardy prohibits courts from relitigating factual issues already resolved in a prior trial.

In the case at bar, the State did not have to prove that Appellant was guilty of child endangering of her daughter, Shayla, to convict her of involuntary manslaughter of her son, Jameeqwa, because there were two separate offenses and two victims. The underlying felony for Appellant's involuntary manslaughter conviction was the felonious child endangering of her son. The State proved that Jameeqwa Kates suffered serious physical harm, his death, as a result of Appellant committing child endangering against him. The Appellant's prior child endangering conviction involving her daughter, Shayla Kates, was not an issue in Appellant's subsequent trial for the involuntary manslaughter of her son, Jameeqwa Kates. Thus Appellant's conviction for involuntary manslaughter of her son passed the test as set forth in Harris, supra and adopted by the Ohio Supreme Court in State v. Thomas (1980) 61 Ohio St. 2d 254.

The test for establishing whether a single act or transaction

that violates two distinct statutory provisions constitutes the "same offense" for purposes of a double jeopardy analysis is whether each statute requires proof of a fact that the other does not. Blockburger v. United States, supra, at 304. The act of appellant, leaving her children at home unattended, resulted in her conviction for child endangering of her daughter and a separate conviction for involuntary manslaughter of her son. Each statute requires additional proof that the other does not require, therefore, appellant's conviction for involuntary manslaughter did not violate the double jeopardy clause of the United States or Ohio Constitutions.

The Appellant's sole claim arises from the refusal of the trial court to grant her motion to dismiss this prosecution based upon the doctrine of double jeopardy. The Double Jeopardy Clause of the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." United States Constitution Amendment V. Section 10, Article 1 of the Ohio Constitution contains a similar provision that "[n]o person shall

be twice put in jeopardy for the same offense." The Federal Constitution protection against double jeopardy is applicable to Ohio cases under Benton v. Maryland (1969), 395 U.S. 784.

In Blockburger v. United States (1932), 284 U.S. 299, 304, the United States Supreme Court held that, when the same act or transaction constitutes a violation of two distinct statues, the test to be applied to determine whether there are two offenses for purposes of the Double Jeopardy Clause of the United States Constitution is whether each statute "requires proof of an additional fact which the other does not." Unless each statute includes an element not included in the other, a defendant convicted or acquitted of a violation of one may not be prosecuted for a violation of the other based upon the same incident. The United States Supreme Court established another test in Harris v. Oklahoma (1977), 433 U.S. 682. Ohio adopted the Blockburger and Harris tests in State v. Thomas (1980) 61 Ohio St. 2d 254.

The appellant's reliance on Brown v. Ohio (1977), 432 U.S.

161 is misplaced. In Brown, the Court reasoned that the Double Jeopardy Clause bars prosecution for the crime of stealing an automobile following prosecution and punishment for the lesser included offense of joyriding. The Court also found that there was only one offense and the defendant could not twice be placed in jeopardy for the same offense. Appellant's case is easily distinguished from Brown v. Ohio. Appellant was first prosecuted for child endangering her eight year old daughter in Youngstown Municipal Court. Appellant was later indicted and entered a plea of no contest to the charge of involuntary manslaughter in the Mahoning County Court of Common Pleas for the death of her five year old son. The offense of child endangering of Appellant's daughter is not a lesser included offense of the involuntary manslaughter of Appellant's son. There were two separate victims of two separate offenses.

The appellant also improperly relies on Harris v. Oklahoma (1977), 433 U.S. 682. In Harris, the Court found that the Double Jeopardy Clause of the Fifth Amendment barred a separate

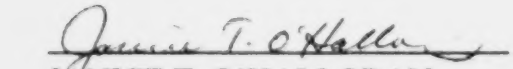
prosecution for the lesser crime of robbery with firearms, since a conviction of the greater crime of felony murder could not be had without conviction of the lesser crime. Appellant's case is not analogous to Harris. Appellant was not first convicted of involuntary manslaughter and then convicted of the underlying felony of felonious child endangering. In order to convict Appellant of the involuntary manslaughter of her five year old son, Jameeqwa Kates, the court did not have to find Appellant guilty of the child endangering of her eight year old daughter, Shayla Kates. Thus, Appellant's reliance on this case is also misplaced.

CONCLUSION

WHEREFORE, based upon the foregoing law and argument, Appellee respectfully submits that the trial court correctly overruled the Appellant's motion to dismiss the indictment. The appellate court correctly affirmed the conviction since this conviction for involuntary manslaughter did not violate the double jeopardy clause of the United States or Ohio Constitutions. There is no constitutional violation for

this court to review. As a result, the petition for certiorari must be dismissed.

Respectfully submitted,



JANICE T. O'HALLORAN
Ohio Reg. No. 0021024
120 Market Street
Youngstown, Ohio 44503
(330) 740-2330 (Office)
(330) 740-2308 (Fax)

Attorney for Respondent